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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,586	10/09/2003	Edward R. diGirolamo	4782-030	9767
24112 7590 04/15/2008 COATS & BENNETT, PLLC 1400 Crescent Green, Suite 300 Cary, NC 27518				
EXAMINER				
A. PHU DIEU TRAN				
ART UNIT		PAPER NUMBER		
3633				
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04/15/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/682,586

Applicant(s)

DIGIROLAMO ET AL.

Examiner

PHI D. A

Art Unit

3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10, 12-20 and 25-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11, 21-24, 34-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S506)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

In view of the appeal brief filed on 1/14/2008, PROSECUTION IS HEREBY REOPENED. The rejection of the claims are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below: /Brian E. Glessner/

Supervisory Patent Examiner, Art Unit 3633

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble of the claims are to a "stud spacer", however, the limitation of "is connected to another stud spacer by extending the projection of the one stud spacer through the opening within one stud ...of another stud spacer" positively claims the stud with the studs spacers. The claims thus are treated as a combination between the studs and the stud spacers.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21-24, 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Vukmanic (4677802).

Vukmanic shows a stud spacer (12) for extending between two studs with each stud having an opening therein, the spacer comprising a main member (17), the main member including first and second end portions(40), a projection (41) extending from one of the end portions, an opening (50) formed in the other end portion, at least one flange (71) for connecting to one of the two studs, spaced apart flanges (71, and at 40) for connecting to one of the two studs, the opening formed in the second end portion of the main member including a slot, a projection receiver (50) formed in the other end portion, either the projection or projection

receiver including one or more locking members such that when a projection of one of the spacer is projected into the receiver of another spacer, a locked condition is realized, either the projection or projection receiver includes one or more stops for engaging the one or more locking members (figure 4), the locking members are disposed on the projection and the stops form a part of the receiver, at least a portion of the projection is deflectable in response to the projection engaging the receiver, the projection and receiver are disposed such that when consecutive stud spacers are connected together, the projections and receivers will overlaid each other (figure 4), the projection and receiver include a flap that is at least partially flexible, in a locked position, the flaps of the projection and receiver engage each other (figure 4), both the projection and receiver include a flexible flap, a hold down element, an opening disposed between the flap and the hold down element, a deflector, an opening disposed between the deflector and the hold down element.

3. Claims 1, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Soucy (3778952).

Soucy (figures 2-4) shows a stud spacer for extending between two studs with each stud (12) having an opening therein, the stud spacer comprising a main member (32) adapted to extend between the two studs; the main member including first and second end portions; a projection (42) extending from one of the end portions; an opening (the slots between part 38 and 32) formed in the other end portion; and wherein one stud spacer is connected to another stud spacer by extending the projection of the one stud spacer through the opening within one stud and into the opening of another stud spacer, the opening formed in the second end portion of the main member including a slot.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soucy (3778952) in view of Pellock (5884448).

Soucy shows all the claimed limitations except for at least one flange for connecting to one of the two studs, spaced apart flanges for connecting to one of the two studs.

Pellock shows at least one flange for connecting to one of the two supporting structures, spaced apart flanges(40, 38, 39) for connecting to one of the two supporting structures [C].

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Soucy's structure to show at least one flange for connecting to one of the two studs, spaced apart flanges for connecting to one of the two studs since the flanges enhance the securement of the spacer to its supporting structures as taught by Pellock.

6. Claims 4, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soucy (3778952) in view of Pellock (5884448).

Soucy shows all the claimed limitations except for the main member includes a pair of side flanges and a pair of end flanges.

Pellock shows the main member (28) including a pair of side flanges (30) and a pair of end flanges (40, 38, 39) for connecting to one of the two supporting structures [C].

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Soucy's structure to show the main member includes a pair of side flanges and a pair of end flanges since the side flanges strengthens the spacer against bending and the flanges enhance the securement of the spacer to its supporting structures as taught by Pellock.

Per claim 8, Soucy as modified further shows at least one end flange is divided into at least two portions and the projections extends between the two portions.

7. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soucy (3778952) in view of Pellock (5884448) as applied to claim 4 above and further in view of Tollenaar (6705056).

Soucy as modified shows all the claimed limitations including the main member including a central section and the side flanges are turned out of the plane of the central section except for the end flanges are adapted to be connected to the two studs that the stud spacer extends between.

Tollenaar discloses attaching the end flanges (31a) to two studs (11) that the stud spacer extends between, the end flanges and the side flanges are turned in opposite directions with respect to the central section.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Soucy's modified structure to show the end flanges are adapted to be connected to the two studs that the stud spacer extends between as taught by Tollenaar since it enables the secured attachment of the stud spacer to the studs.

Per claim 7, Soucy as modified by Tollenaar further shows the end flanges and the side flanges are turned in opposite directions with respect to the central section.

Response to Arguments

8. Applicant's arguments with respect to claims 1-8, 11, 21-24, 34-38 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claims 21-24, 34-38, the rejection is maintained as the reference reads on the claimed limitations as set forth above. The response to applicant's argument in the previous office action of 1/10/2007 still applies.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different stud spacers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3633

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Phi D A/

Examiner, Art Unit 3633

Phi Dicu Tran A

4/13/08